Filed 8/20/04 Sandra T. v. Superior Court CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

SANDRA T. Petitioner, v. THE SUPERIOR COURT OF TULARE COUNTY, Respondent, TULARE COUNTY HEALTH AND HUMAN SERVICES AGENCY, Real Party in Interest.	F045464 (Super. Ct. No. J03-57059) **OPINION**

THE COURT[*]

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Martin Staven, Judge.

Sandra T., in pro. per., for Petitioner.

No appearance for Respondent.

Kathleen Bales-Lange, County Counsel, and Marsha Perkes, Deputy County Counsel, for Real Party in Interest.

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[*] Before Harris, Acting P.J., Levy, J. and Gomes, J.

Petitioner in pro. per. seeks an extraordinary writ (Cal. Rules of Court, rule 39.1B) to vacate the orders of the juvenile court terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing.[1] We will deny the petition.

STATEMENT OF THE CASE AND FACTS

On August 28, 2003, the Tulare County Health and Human Services Agency (agency) removed petitioner's three children, then-four-year-old V., one-year-old S. and newborn S.J., from her custody after S.J. tested positive for methamphetamine. Kenneth, petitioner's husband and the father of the children, was incarcerated.[2] The agency filed a dependency petition on the children's behalf alleging petitioner's drug use placed the children at risk of harm.

On September 16, 2003, petitioner was admitted to Mothering Heights, a residential drug treatment facility. However, she was discharged from the program two weeks later after she tested positive for methamphetamine. The social worker immediately set up another drug treatment evaluation for petitioner but she missed the appointment.

On October 2, 2003, the juvenile court assumed dependency jurisdiction and ordered reunification services for petitioner and Kenneth. Petitioner's plan of reunification required her to complete parenting classes, complete drug treatment and submit to random drug testing. The court set the six-month review hearing for April 1, 2004.

Over the next several months, despite numerous reminders, petitioner failed to seek drug treatment, enroll in parenting classes, drug test or regularly visit her children.

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 Kenneth did not file an extraordinary writ petition from the instant dependency proceedings.

On December 20, 2003, petitioner was arrested on federal mail theft charges. She was incarcerated in county jail until January 26, 2004, when, with the assistance of her caseworker, she was released pending sentencing to the PAAR Center, a drug treatment facility. In a letter to the court, petitioner's federal defender requested continued services for petitioner based on her compliance with her case plan and the likelihood she would be granted federal probation.

The six-month review was continued and conducted on April 29, 2004. Caseworker Jeanni Buzzelli testified that petitioner was doing well in the PAAR program and had even asked for a referral for parenting classes. However, Ms. Buzzelli recommended the court terminate reunification services because of petitioner's prior history of noncompliance and Ms. Buzzelli's concern for the children's welfare. She testified that petitioner had a long history of drug addiction and her longest stretch of sobriety in the last six years was the 65 days she had been at the PAAR program. Prior to the children's detention in August 2003, Ms. Buzzelli offered petitioner family maintenance services for drug and alcohol abuse but had to close the case because of petitioner's lack of compliance. Within a month, S.J. was born drug-exposed. Further, after the children were detained, petitioner was uncooperative with the agency. She lasted only two weeks at Mothering Heights and before she was arrested on federal charges, she made no attempt to enter drug treatment.

Ms. Buzzelli further testified that the children suffered severe neglect while in petitioner's custody. V. was diagnosed with reactive attachment disorder and opposition defiance and was delayed academically. Both V. and S. required extensive dental work. S.J., though not conclusively diagnosed, displayed features consistent with fetal alcohol syndrome and autism. Despite the obvious severity of the children's problems, according to Ms. Buzzelli, petitioner never asked how they were doing. Ms. Buzzelli testified the girls were placed together as a sibling group and S.J. was placed in a separate foster home because of his extensive medical needs.

The court found petitioner and Kenneth failed to regularly participate and make regular progress in their court-ordered treatment plans and there was not a substantial probability that the children would be returned to their custody within another six months. The court terminated reunification services for both parents and set a section 366.26 hearing. This petition ensued.[3]

DISCUSSION

Petitioner claims the court erred in terminating reunification services because she complied with her case plan to the best of her ability. We find no merit to her claim.

At the six-month review hearing, the court may schedule a permanency planning hearing where the child, on the date of removal, was under the age of three years or is a member of a sibling group and the court further finds, by clear and convincing evidence, the parent failed to participate regularly in the court-ordered plan. (§ 366.21, subd. (e).) If, however, the court finds there is a substantial probability that such a child may be returned to parental custody within six months or that reasonable services were not provided, the court must continue the case to the 12-month permanency hearing. (*Ibid*.) We review the juvenile court's order terminating reunification services for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C*. (2000) 81 Cal.App.4th 1373, 1378-1379.)

In this case, petitioner had only six months to reunify with her children because S. and S.J. were under the age of three when detained and V. and S. formed a sibling group. However, instead of promptly submitting to drug treatment, petitioner resisted by continuing to abuse drugs. It was not until she was forced into drug treatment pending federal prosecution that she sobered up and began to take her case plan seriously. Even

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[3] Real party in interest urges this court to dismiss the petition as facially inadequate pursuant to California Rules of Court, rule 39.1B(j). We decline to do so.

if, at the time of the six-month review hearing, petitioner had been in compliance with her case plan, she nevertheless had not made substantive progress. She had yet to demonstrate that she could remain sober outside the confines of an institutional setting. Therefore, there was no evidence that her children would be returned to her if she were provided another six months of services. Finally, the tremendous damage petitioner's drug abuse caused these young children cannot be minimized. Given petitioner's long history of drug abuse and noncompliance, there is ample reason to fear that the children would continue to suffer if ever placed in her custody. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.